IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.74 OF 1998

Tata Press Ltd. .. Applicant

v/s.

Commissioner of Income Tax .. Respondent
Mumbai

Mr. Nishant Thakkar a/w Mr. Rajesh Poojary a/w Ms. Jasmin Amalsadvala i/b Mulla & Mulla for the applicant for the appellant
for respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 15th NOVEMBER, 2016.

P.C.

1. By this Reference under Section 256(1) of the Income Tax Act, 1961 (the Act) for Assessment Year 1984-85, the Income Tax Appellate Tribunal (the Tribunal) has raised the following questions of law for our consideration :-

> *"(i) Whether, the amendment made by insertion of sub-section (1A) in Section 214 by Direct Tax Laws (Amendment) Act, 1984 providing for grant of interest is clarificatory and in any event applicable to the facts of the present case?*

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order passed by the Commissioner of Income Tax under section 263?

2. The Statement of Case made by the Tribunal as rectified by its order dated 23rd September, 2016 reads as under : -

"2. The relevant facts of the case are that the assessee is a company carrying on business of printing. The assessment year involved is 1984-85 for which the accounting year ended on 31st March, 1984. The assessment was completed under section 143(3) on 25.10.1985, at a total income of Rs.60,02,301/-. On appeal, the CIT(A)-I, Bombay passed an appellate order on 04.04.1986. Consequently, the IAC (Assessment) Range-I(A) Bombay passed an order dated 17.06.1986, giving effect to the order of the CIT(A) dated 04.04.1986 and determined the total income at Rs.36,32,982/-. The CIT, Bombay-I, Bombay, revised the order passed by the I.A.C. Dated 17.06.1986 on the ground that he has granted interest under sub-section 1A of Section 214, which was applicable only for the assessment year 1985-86 onwards and the provisions of section 214(1) only were applicable. In the light of the judgment of the Bombay High Court in the case of Carona Sahu Co. Ltd. (146 ITR 452) the order passed by the I.A.C. Dated 17.06.1986 was found to be erroneous and prejudicial to the interest of the revenue. Therefore, after observing the due process of law, the CIT revised

the said order and directed withdrawal of interest granted under section 214.

3. The assessee appealed against the revisional order to the Tribunal. The Tribunal found that the order passed by the I.A.C. Dated 17.06.1986 had not merged with the appellate order of the CIT(A) and the IAC has wrongly allowed interest u/s 214 and therefore, such order caused prejudice to the interest of revenue and thus, it was erroneous. The Tribunal pointed out that the CIT(A) had not given any direction to grant interest under Section 214 either. In the circumstances, it upheld the revisional order of the CIT for grant of interest u/s 214 as against the judgment of the Bombay High Court reported in 146 ITR 452 (Carona Sahu Co. Ltd. Vs. CIT). In other words, the Tribunal found that no refund was due to the assessee in the original assessment and the order passed by the I.A.C. On 17.06.1986 was not a regular assessment in the light of the Bombay High Court reported in 146 ITR 452. The Tribunal also rejected the plea of the assessee that the amendment made by Taxation Law Amendment Act, 1984 was clarification in nature. According to the Tribunal, it was a substantive provision and it cannot be given effect to the period prior to 1.4.1985."

3. From the above, the relevant dates are extracted hereunder :-

Assessment Year	1984-85
Direct Tax Laws (Amendment) Act, 1984	1st April, 1985
Order of the Assessing Officer	25th October, 1985

Order of the Commissioner of Income Tax (Appeals) [CIT(A)]	4th April, 1986
Order of the Assessing Officer giving effect to the order of the CIT(A)	17th June, 1986
Order of the Commissioner of Income Tax (CIT) u/s 263 of the Act	15th March, 1998
Order of the Tribunal	22nd May, 1992

4. **Regarding Question (i) :-**

(a) Subsequent to the order of the CIT(A), dated 4th April, 1986, the Assessing Officer passed an order on 17th June, 1986 giving effect to the order of the CIT(A). This resulted in total income being revised to Rs.36.32 lakhs from the earlier income determined at Rs.60.02 lakhs on 25th October, 1985 under Section 143(3) of the Act by the Assessing Officer.

(b) The Commissioner of Income Tax (CIT) by an order dated 15th March, 1998 passed under Section 263 of the Act, revised the order dated 17th June, 1986 passed by the Assessing Officer to hold that the applicant assessee was not entitled to interest in terms of Sub-Section (1A) to Section 214 of the Act. This on the ground that sub-section (1A) to Section 214 of the Act was introduced into the Act by Direct Tax (Amendment) Act, 1984, which came into force with effect from 1st

April, 1985. Therefore, according to the CIT, sub-section (1A) of Section 214 of the Act would be applicable only from Assessment Years 1985-86 onwards. Consequently, the grant of interest it held would be governed by Section 214(1) of the Act and for that placed reliance upon the decision of this Court in ***Commissioner of Income Tax Vs. Carona Sahu Co.Ltd., 146 ITR 452***.

(c) Being aggrieved, the applicant assessee carried the issue of interest receivable in terms of Section 214(1A) of the Act in appeal to the Tribunal. The Tribunal dismissed the applicant assessee's appeal on the basis of the decision of this Court in Carona Sahu Co. Ltd. (supra) on the interpretation of Section 214(1) of the Act. Further, the Tribunal negatived the applicant assessee's contention that Section 1(A) of Section 214 of the Act as introduced by the Direct Tax Laws (Amendment) Act, 1984 is clarificatory. Consequently, it held that the amended Section 214 of the Act which contains sub-section (1A) thereof can not be given effect to for the period prior to 1st April, 1985.

(d) The question as formulated for our consideration is no longer *res integra* as this Court in ***Godrej & Boyce Manufacturing Co. Ltd. Vs. P.K. Gupta, Commissioner of Income Tax & Ors. 284 ITR 85*** had occasion to deal with the scope and effect of amended sub-section (1A) to Section 214 of the Act, which came into force w.e.f. 1st April, 1985. This Court in the above case after considering the earlier decision of the full bench of this Court in Carona Sahu Co. Ltd. (supra) held that the Taxation Laws (Amendment) Act, 1984 is procedural in nature and, therefore, would apply to all pending proceedings. In the above case, the Court was concerned with assessment relating to Assessment Year 1982-83 and only the rectification order was passed on 2nd July, 1985 i.e. after the amended sub-section 1A to Section 214 of the Act came into force w.e.f. 1st April, 1985.

(e) In the present facts, all orders including the order passed in the regular assessment proceedings by the Assessing Officer were passed after the amended sub-section 1A of Section 214 of the Act came into force w.e.f. 1st April, 1985. Moreover, the decision of this Court in Carona Sahu Co. Ltd. (supra) was rendered in the context of Section 214 of the Act prior to the introduction of the amended sub-section (1A) in Section 214 of the Act.

(f) Therefore, the issue raised herein on merits, stands concluded in favour of the applicant assessee by the decision of this Court in Godrej

& Boyce Manufacturing Co. Ltd. (supra).

(g) In the above view, question (i) is answered in the affirmative i.e. in favour of the applicant assessee and against the respondent Revenue.

5. Regarding Question (ii) :-

(a) As a consequence of our answer to question (i), this has to be answered in the negative i.e. in favour of the applicant assessee and against the Revenue.

6. Accordingly, the Reference is disposed of in the above terms. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**